



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Copy Data Systems, Inc.

File: B-234855

Date: June 14, 1989

DIGEST

Protester may not be awarded the costs of filing and pursuing a protest, including attorneys' fees, where protest is academic because agency, shortly after filing of protest, took action to satisfy the protester's complaint and thus no decision on the merits of the protest is issued.

DECISION

Copy Data Systems, Inc., protests the extension of the performance period of a contract to Goodway Graphics of Virginia, Inc., under solicitation No. OTR-0000I-00-6120-00, issued by the Agency for International Development (AID) for printing services. Copy Data also claims the costs of pursuing the protest.

The protest is dismissed and the claim is denied.

Copy Data states that Goodway's original award under the above solicitation was to expire on February 29, 1988, and while the contract provided for no option provisions, AID improperly extended performance from February 29, 1988, to February 28, 1989, without competing the requirement as required by the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253(a)(1)(A) (Supp. IV 1986). Copy Data also asserts that AID's decision to further extend Goodway's contract without competition for an additional year beyond February 28, 1989, is another violation of CICA.

AID asserts that Copy Data's protest of the initial extension of Goodway's contract from February 29, 1988, to February 28, 1989, is untimely because Copy Data had notice, at the latest on February 21, 1989, which Copy Data does not refute. Therefore, since Copy Data's protest was not filed here until March 17, 1989, more than 10 days after it knew the basis of protest, we dismiss it as untimely. 4 C.F.R. § 21.2(a)(2) 1989.


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With respect to Copy Data's second protest issue, that AID again improperly extended Goodway's contract for an additional year, AID reports that no modifications to the Goodway contract, which expired on February 28, 1989, have or will be made. Accordingly, Copy Data's allegation that it was again improperly excluded from the competition is academic.

Notwithstanding that corrective action has been taken by AID, Copy Data argues it is entitled to its costs of filing and pursuing the protest, including attorneys' fees, because but for Copy Data's initiative AID would have improperly entered into a second 1-year extension of the Goodway contract. Copy Data argues that since AID was given both the opportunity and time to take corrective action prior to Copy Data filing the protest, but did not take the corrective action until after the filing of the protest, Copy Data is entitled to protest costs.

We have held that where an agency, shortly after receipt of a protest, takes action to satisfy the protester's complaint, the award of protest costs is not appropriate. 1/ Storage Technology Corp., B-235308, May 23, 1989, 89-1 CPD ¶ ____.

We dismiss the protest and deny the claim.

 *James F. Hinchman*
James F. Hinchman
General Counsel

1/ We also noted in that decision that we recently published in the Federal Register (see 54 Fed. Reg. 1435 (1989)) a notice announcing a review of our protest regulations and inviting the public to comment on how we might improve the protest process. As part of that review, we will consider comments pertaining to the award of costs.